

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

JAMES CONTANT, *et al.*,

Plaintiffs,

v.

BANK OF AMERICA CORPORATION, *et al.*,

Defendants.

Civil Action No. 17-cv-3139-LGS

(related to No. 13-cv-7789-LGS)

**DETAILS SUPPORTING PRELIMINARY APPROVAL PURSUANT TO RULE III.C.5
OF THE COURT'S INDIVIDUAL RULES AND PROCEDURES FOR CIVIL CASES**

I. **Introduction**

Plaintiffs respectfully submit this Exhibit pursuant to Rule III.C.5 of the Court's Individual Rules and Procedures for Civil Cases, providing the information required by that Rule in support of Plaintiffs' Motion for Preliminary Approval of Settlements, for Certifications of the Proposed Settlement Classes for Settlement Purposes, for Appointment of Settlement Class Representatives, and for Appointment of Settlement Class Counsel. Rule III.C.5 provides in full:

Class Actions. Any party moving for preliminary approval of a class action settlement must disclose the proposed plan of allocation and provide a spreadsheet or other document detailing the amount of (a) the total settlement fund, (b) the Claims Administrator's fee, costs and expenses, (c) proposed attorneys' fees, costs and expenses, (e) the named Plaintiffs' proposed service fee, (f) any other deduction from the settlement fund before payment to class members, and (g) the anticipated recovery in dollars and as a percentage of the plaintiff's estimated damages for the class and any subclass in the aggregate and per class member, including any assumptions used in calculating these amounts. The party moving for preliminary approval shall also file a proposed schedule for settlement, including dates for proposed class notice, submission of objections and exclusion requests and a fairness hearing.

In accordance with Local Rule 23.1, a party seeking preliminary approval of a class action settlement must disclose any fee sharing agreement with any attorney or other person. The disclosure shall include the names and addresses of the applicants for such fees and the amounts requested, respectively.

II. **The Total Settlement Fund**

The Settlements provide for combined cash payments of \$10,935,000. The Citigroup Settlement provides for a payment of a \$9,950,000 by Citigroup, *see id.* § II, ¶ (qq), and the MUFG Settlement provides for a payment of \$985,000 by MUFG. *See id.* § II, ¶ (qq).

III. **The Claims Administrator's Fee, Costs, and Expenses**

After carefully comparing bids and notice plan proposals from five leading claims administrators, Plaintiffs request the Court's approval of their selection of Heffler Claims Group ("Heffler") as the proposed Claims Administrator. As detailed in the Declaration of Michael Dell'Angelo in Support of Plaintiffs' Motion for Preliminary Approval ("Dell'Angelo Decl."),

Heffler estimates that claims administration costs will range from \$136,089 for a total Class size of 50,000 to \$355,278 for a Class size of 200,000. *Id.* ¶ 32. Actual notice and administration costs will vary based on a variety of factors in addition to the total number of Class members, including the claims rate, the methods of publication and internet advertising notices, and other related factors. As noted below, Plaintiffs' expert James Bibbings estimates that the total number of Class members is 99,138. Declaration of James Bibbings, ¶ 19. For a total Class size of 100,000, Heffler estimates that the total costs of publication notice, direct-mail postcard and email notice, internet notice including advertising the Settlement on social media and websites, and administering the claims will cost \$209,902. Dell'Angelo Decl. ¶ 32.

IV. Proposed Attorneys' Fees, Costs, and Expenses

In order to avoid burdening the Court and potentially confusing the Settlement Class members with multiple fee and expense requests in the event that additional settlements are reached in the near future, Plaintiffs propose that their formal motion for an award of attorneys' fees and reimbursement of costs and expenses be temporarily deferred, as set forth in the Proposed Order accompanying Plaintiffs' Motion. Plaintiffs do not intend to seek service awards for the proposed Settlement Class Representatives from the Citigroup and MUFG Settlements. Pursuant to the Settlement Schedule proposed below, Plaintiffs propose to submit a motion for attorneys' fees not to exceed 20 percent with respect to the proceeds of the Citigroup and MUFG Settlements (i.e. a maximum fee request of \$2,187,000), as well as reimbursement of reasonably incurred costs and expenses, within 30 days of the completion of Notice to the Settlement Class members.¹

¹ Plaintiffs reserve the right to seek additional attorneys' fees and service awards from future settlements and/or judgments. Counsel for Plaintiffs do not have any fee-sharing agreements subject to disclosure pursuant to S.D.N.Y. Local Civil Rule 23.1.

V. Other Deductions

Plaintiffs do not anticipate any other significant deductions from the Settlement Fund. Plaintiffs believe that other Settlement expenses, if any, will be modest and may include taxes and other escrow costs associated with administering the Settlement Funds.

VI. The Anticipated Recovery in Dollars and as a Percentage of Plaintiffs' Estimated Classwide Damages, in the Aggregate and Per Class Member

Deducting the up to 20 percent maximum attorneys' fees request and estimated claims administration costs of \$209,902 from the Settlement Fund of \$10,935,000.00 (the "Gross Settlement Fund") results in a Net Settlement Fund of \$8,538,098, not including reimbursement of attorney expenses. Thus, applying the preliminary Class size estimate of 99,138, the estimated average recovery per Class member provided by the Gross Settlement Fund from these partial Settlements is \$110.23, and the average per-Class member recovery from the Net Settlement Fund is \$86.07.

Applying the estimates detailed in Plaintiffs' Memorandum for total actual damages in this Action based on the estimates submitted in the *FOREX* plaintiffs' final settlement approval papers, for a Class size of 99,138, the per-Class member estimate for actual damages is between \$2,056 (using the more conservative \$204 million damages estimate) and \$7,974 (using the higher \$791 million damages estimate).

VII. Proposed Schedule

As set forth in the Proposed Order Plaintiffs submit the below proposed schedule for: (a) completion of notice; (b) Plaintiffs' motions for attorneys' fees, expenses, and service awards for the Settlement Class representatives; (c) the deadlines for Settlement Class Members to object to the Settlement or request exclusion from the Settlement Class; (d) Plaintiffs' notice to the Court identifying persons requesting exclusion from the Class; (e) Plaintiffs' notice to the Court

confirming completion of the Notice Plan; (f) Plaintiffs' submission of a motion and memorandum in support of final approval of the Settlement; (g) any responses by the parties to any objections; (h) a Fairness Hearing; and (i) submissions of claims by Settlement Class Members.

Plaintiffs also propose to submit a formal Motion for Approval of Notice Plan and Plan of Allocation within 120 days of the Court's order granting preliminary approval of the Settlements (the "Preliminary Approval Order"), to allow the Court sufficient time to review those plans and order any necessary revisions. Because Plaintiffs anticipate obtaining Settlement Class member identifying information and transactional data in the upcoming months through third party discovery efforts which are continuing, Plaintiffs propose that notice shall be completed within 60 days of the Court's Order directing Notice and approving Plaintiffs' Plan of Allocation:

Proposed Settlement Schedule

Event	Timeline
Plaintiffs' Motion for Approval of Notice and Plan of Allocation	Not later than 120 days after entry of the Court's Order granting Preliminary Approval
Completion of Direct Notice to the Class ("Direct Notice Date")	Within 60 days from the entry of the Court's Order directing Direct Notice and approving Plaintiffs' Plan of Allocation
Completion of Publication Notice to the Class ("Publication Notice Date") ²	Within 60 days from the entry of the Court's Order directing Publication Notice and approving Plaintiffs' Plan of Allocation
Submission of motion for attorneys' fees, expenses, and service awards for the class representatives.	30 days after the Notice Date
Deadline for Class Members to Opt Out of the Class or Object to the Settlements	60 days after the Notice Date
Plaintiffs' Notice to Court Identifying Persons or Entities Requesting Exclusion from the Class and Completion of the Notice Program	Within 15 days after the deadline to opt-out of the Settlements
Submission of motion and memorandum in support of final approval of the Settlement and any responses by the parties to any objections filed by and Class members.	90 days after the Notice Date
Fairness Hearing	On a date to be determined by the Court
Claims Deadline	Within 120 days of the Fairness Hearing

The Proposed Settlement Schedule is also set forth in Paragraph 32 of the Proposed Order accompanying Plaintiffs' Motion.

² Collectively, the Direct Notice Date and Publication Notice Date are referred to herein as the Notice Date.

VIII. Summary of Information Required by Rule III.C.5

The following chart summarizes the information provided above:

Total Settlement Fund (Combined Citigroup and MUFG Settlement Amounts)	\$10,935,000
Estimated Notice and Claims Administration Costs	Approximately \$209,902
Anticipated Attorneys' Fees Request	Not to exceed 20% of Citigroup and MUFG Settlement Funds (\$2,187,000)
Attorneys' Costs and Expenses	To be determined
Proposed Service Awards	None
Other Deductions	None
Net Settlement Fund (Deducting 20% Maximum Fee Award and Claims Administration Costs)	\$8,538,098
Estimated Number of Settlement Class Members	99,198
Anticipated Average Recovery Per Class Member (Total Settlement Fund)	\$110.23
Anticipated Average Recovery Per Class Member (Net Settlement Fund)	\$86.07
Estimated Potential Classwide Damages	\$204 million to \$791 million
Estimated Average Potential Damages Per Class Member	\$2,056 to \$7,974
Rule 23.1 Fee Sharing Disclosure	None

Dated: May 29, 2019

Respectfully submitted,

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